

CAUSE NO. 048-276347-15

HARRIET NICHOLSON

Plaintiff

V

NATIONSTAR MORTGAGE LLC

Defendant

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IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

48th JUDICIAL DISTRICT

PLAINTIFF'S NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Plaintiff, Harriet Nicholson, and files this her No-Evidence Motion for Summary Judgment pursuant to TEXAS RULE OF CIVIL PROCEDURE 166a(i) against Defendant, Nationstar Mortgage, LLC.

I. NATURE OF SUIT

In November of 2014, Bank of America N. A. purportedly transferred the servicing of a loan owed by Plaintiff to Nationstar Mortgage. On December 8, 2014, Plaintiff sent a qualified written request to Nationstar requesting the validity of the debt. On December 22, 2014, Nationstar Mortgage sent Plaintiff a "Notice of Default and Intent to Accelerate" advising the purported loan owed by Plaintiff was \$80,603.28 in arrears and threatened a foreclosure if not cured by January 21, 2015. Defendant's claim for attorney's fees has been pending for more than five years and Plaintiff seeks a final judgment in this cause.

II. ARGUMENT AND AUTHORITIES

A. Standard of Review

If a plaintiff wants to force a defendant to prove its affirmative defense, the plaintiff may move for "no-evidence" summary judgment under TEX. R. CIV. P. 166a(i). A court may grant a no-evidence motion for summary judgment if the movant can show that adequate time for discovery has passed and the non-movants have no evidence to support one or more essential elements of their causes of action or affirmative defense. TEX. R. CIV. P. 166a(i).

B. Defendant is not Entitled to Attorney's Fees.

In order to be entitled to attorney's fees, the prevailing party must show: (1) attorneys' fees were pleaded for; (2) the party is authorized to recover attorneys' fees under statute, contract, or equity; (3) the party was represented by an attorney; (4) the party complied with the conditions precedent for recovery; (5) the party is the prevailing party or is otherwise entitled to attorneys' fees; (6) that attorneys' fees were incurred; and (7) the attorneys' fees were reasonable and necessary. *Akin*, 299 S.W.3d at 120-21.

Defendant claims entitlement to attorney's fees under the Texas Finance Code and the Texas Declaratory Judgment Act. Defendant cannot prove elements: (2) the party is authorized to recover attorneys' fees under statute, contract, or equity; (4) the party complied with the conditions precedent for recovery; (5) the party is the prevailing party or is otherwise entitled to attorney's fees; (6) that attorneys' fees were incurred; and (7) the attorney's fees are reasonable and necessary.

III. CONCLUSION

Defendant can not produce any evidence to support its claim for attorney's fees. Plaintiff's No-Evidence Motion for Summary Judgment as to Defendant's request for attorney's fees should be granted.

IV. PRAYER

WHEREFORE, Plaintiff prays that this Motion for Summary Judgment be granted and that Plaintiff Harriet Nicholson recovers costs of court, and for such other and further relief as may be deemed appropriate.

Respectfully submitted,

/s/ Harriet Nicholson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion for Summary Judgment was sent to all parties and/or attorneys of record, in accordance with the Texas Rules of Civil Procedure on this the 9th day of March, 2021.

/s/ Harriet Nicholson